IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 26867 of 2007(W)

PETITIONER:

PIPE DISTRIBUTORS,
37/3464 DESABHIMANI JUNCTION,
N.H. ROAD, KALOOR
P.O. ERNAKULAM DISTRICT,
REPRESENTED BY PARTNER,
AJITH BHASKAR.

BY ADVS. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:

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1. COMMERICIAL TAX OFFICER,
KVAT-IIICIRCLE,
ERNAKULAM.

2. COMMERICIAL TAX OFFICER,(AA)
COMMERICIAL TAXES, ERNAKULAM.

3. THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.TEKCHAND

THIS WRIT PETITION (CIVIL) HAVING COME FOR ADMISSION AND HEARD 25/09/2007, THE COURT ON 18/10/2007 DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.26867 of 2007 W

Dated this the 18th day of October, 2007.

JUDGMENT

The principal challenge in this writ petition is with regard to the Note forming part of Form No.9 in the Kerala Value Added Tax Rules {for short "**the Rules**"} prescribing the format for credit notes and debit notes, that are to be exchanged by a selling dealer and a purchasing dealer in cases where subsequent to the sale of taxable goods by a dealer, the purchaser has returned the goods covered by the tax fully or partly. The challenge is on the premise that the Note forming part of Form No.9, contained in the Rules is invalid, inoperative and unenforceable to the extent it specifies that every credit note would bear a corresponding debit note and vice versa and the same is, therefore, contrary to Section 41(1) of the Kerala Value Added Tax Act {hereinafter referred to as "**the Act"**}. There is also a challenge to the order of assessment passed by the assessing authority for the months of April-May and June, 2006. Obviously, the said order of assessment is appealable and this court would be reluctant to entertain the challenge against the order of assessment, unless there are extraordinary circumstances warranting the same. But since a challenge has

been mounted as regards the statutory prescription, I have considered the writ petition insofar as it relates to the challenge against the Note to Form No.9 forming part of the Rules.

2. Petitioner is a dealer in pipes registered on the files of the first respondent. It filed annual return for the year 2005-06 and also for the month of June, 2006. The 2nd respondent proposed to pass an order of assessment after rejecting the returns. This was opposed by the petitioner. Overruling the contention, a best judgment assessment was passed by the assessing authority as per Ext.P4. One of the aspects dealt with in the order of assessment related to a claim made by the assessee in relation to certain goods, which apparently were returned by the purchaser. The assessing authority proposed acceptance of only such credit notes, to which there were corresponding debit notes issued by the purchasing dealer. The assessee claimed that debit notes have been obtained only in respect of a portion of the turnover. The assessing authority, therefore, did not accept the claim of the assessee as regards the entire input tax on sales return. A reading of the order of assessment shows that the assessee was

granted an opportunity to produce debit notes even at the time of personal hearing. The assessee has been required to pay only the balance tax due, after giving credit to the eligible input tax. In the wake of this view taken by the assessing authority, deciding to adhere to the mandatory prescriptions discernible from Form No.9 of the Rules, the assessee has thought it necessary to challenge the validity of the said form, on the premise that it is ultra vires Section 41 of the Act.

3. In a statement filed on behalf of the respondents, as directed by this court, it is stated that an audit visit was conducted at the business place of the petitioner on 13.11.2006. Verification of the monthly return from April, 2005 to June, 2006 disclosed that the dealer had effected sales returns to the tune of Rs.20,35,206/- and claimed an input tax of Rs.77,953/- on the sales return for the returned goods. Even though the petitioner produced credit notes to prove this claim, no debit notes were produced at the time of verification of the accounts. The assessee produced certain debit notes for the input tax claimed at the time of objecting to the pre-assessment notice. Though almost an year was available to the assessee to produce the

debit notes, he was not able to do so. Mere filing of the credit notes given to the purchasing dealer by the selling dealer is not sufficient to allow exemption on account of the return of goods once sold. The assessing authority will not be in a position to ascertain whether credit notes have actually been issued to the purchaser. It is also contended that, in the present case, the assessee did produce some debit notes corresponding to the credit notes issued by him. On verification of the same, the sales return was accepted to the extent where it is proved that the goods, which once sold, were returned within a period of 90 days, as provided in law. Essentially, Section 41 of the Act enables the selling dealer to claim a credit for a portion of the input tax, where some of the goods which were sold are returned for a variety of reasons. Form No.9 is in a format that is consistent with Section 41 of the Act. It is also contended that the order of assessment is rested on other grounds as well.

4. Essentially, Section 41(1) deals with a case of return of taxable goods once sold, and the selling dealer accepting such return. The Section would have frequent application, to cases where consumer goods are sold in small

quantities, but nevertheless, sales turn over would reflect a high volume of sales. The assessee, in the present case, is a dealer in pipes, and therefore, the commodity might be required by small contractors and plumbers, frequently in small quantities. There could be a variety of reasons for return of the same. In such circumstances, though the sale is complete and therefore the taxable event, as contemplated by the Act, has also taken place, law gives a liberty to the selling dealer to demonstrate that a portion of the goods once sold was actually returned and therefore, the tax effect on such sales as reflected in the sale invoice would actually be lower than what was originally contemplated. The sales turnover would also, therefore, be proportionately reduced.

5. For every sale made by a dealer, there ought to be a corresponding entry in the books of accounts of the purchasing dealer as well. Reference is made to Rule 10(b) of the Rules which deals with computation of taxable turnover. It is also contended that mere filing of credit notes issued by the selling dealer is not adequate in computing the taxable turnover, by giving credit to the goods which are returned after sale within the

prescribed time frame. When taxable goods once sold are returned by the purchasing dealer, the selling dealer issues a credit note to the extent of the value of the goods returned. When a credit note is received by the purchasing dealer, he has to get refund of the input tax, corresponding to the input tax received through the credit note. The purchasing dealer has, therefore, to issue a debit note to the selling dealer. Thus the credit note issued by the Selling Dealer will correspond with the Debit Note issue by the Purchasing Dealer. This is what is contemplated by Section 41 of the Act, read with the relevant Rules. It is contended by the Department that there is no substance in the contention raised by the assessee that what is contemplated by Section 41 of the Act is only Credit Note issued by the Selling Dealer and a corresponding Debit Note to be issued by the Purchasing Dealer, is an additional burdensome requirement, not contemplated by the statute.

6. A reply affidavit has been filed by the petitioner reiterating the contentions raised in the writ petition.

7. I have heard learned counsel for the petitioner Sri.K.U.Vijayan and learned Government Pleader Mr.Tekchand.

8. Challenge against the order of assessment Ext.P4 as such will not normally be entertained by this court under Article 226 of the Constitution of India, in circumstances where there is an efficacious alternate remedy available to the assessee under the statute. But the assessee has raised a contention with regard to the prescription of Form No.9 in terms of Rule 59 of the Rules. According to the assessee, the Note appended to Form No.9 is ultra vires Section 41 of the Act and consequently, production of a Credit Note by the Selling Dealer for the purpose of computing the taxable turnover of such dealer as per Rule 10(b) of the Rules should be treated as sufficient compliance with Section 41 of the Act. The assessee contends that inasmuch as the Note to Form No.9 contemplates a corresponding Debit Note, the form is ultra vires Section 41 of the Act read with Rule 59 of the Rules. Since what is involved is a matter which will have recurring application to traders/assessees, I have considered the said contention on merits.

9. Section 41 of the Act provides for a situation where subsequent to the sale of taxable goods effected by a dealer, the purchaser has returned the goods covered by the tax

invoice fully or partly. There is a period prescribed for return of such goods, so as to invite the application of Section 41 of the Act [90 days from the date of sale]. Thereupon the dealer effecting the sale shall issue forthwith, to the purchaser a Credit Note containing such particulars, as may be prescribed. "Prescribed" means prescribed under the Rules. Rule 59 of the Rules specifically provides that the Credit Note and Debit Note specified in Section 41 shall be in Form No.9. Form No.9 is a common form for a Credit Note/Debit Note. It provides for description of goods, quantity, sales/purchase bill number and date, date of return with documents details, amounts involved in the sale, related tax and miscellaneous remarks. Other particulars relating to the Credit Note/Debit Note is also required to be provided therein. Apparently, it is a Note, forming part of Form No.9, which is assailed herein by the assessee. It reads as follows:

> **"<u>Note</u> 1: Every debit will have equivalent credit and vice versa 2. Every credit note would bear corresponding debit note and vice versa. 3. Seller and Buyer will exchange credit/debit notes mutually. 4. Time limit as per Rules apply to only sales/purchase returns."**

10. Thus, what is contemplated by the 'Note' is only an affirmation of the particulars, which are even otherwise required in the form. Every Credit Note in Form No.9 is required to be serially numbered. In the case of a Selling Dealer, the assessee in the present case, issuance of Credit Note is a certification that the Selling Dealer has credited the Purchasing Dealer's account with the value of goods returned, together with taxes related thereto. At the same time, a Debit Note is issued by the Purchasing Dealer indicating the converse. All that is mentioned in the 'Note' is that a Credit Note would bear the corresponding Debit Note and vice versa. In other words, the Credit Note by itself which is issued by the Selling Dealer would essentially be a self-serving document. A corresponding Debit Note issued by the Purchasing Dealer would be a contemporaneous document affirming the correctness and veracity of the Credit Note. The requirement in law, is explicit in the provisions contained in the Note, which says that the seller and buyer should exchange Credit Note/Debit Note mutually.

13. The taxable event in the case of a levy of sales tax, or Value Added Tax, as the case may be, is the sale of

taxable goods. Sale of movable goods takes place essentially when the parties to the agreement for sale intend the sale to take place. Where therefore a Purchasing Dealer purchases goods from the Selling Dealer pursuant to a requisition made by the former with the latter after the price is realised by the Selling Dealer from the Purchasing Dealer and takes delivery of the goods pursuant to such agreement which the parties must have struck, the sale becomes complete, in law. Sale is evidenced by the invoice, which is raised by the Selling Dealer. When the sale becomes complete, the property in the goods is acquired by the Purchasing Dealer. The taxable event has actually taken place at that point of time. The charging provision relating to levy of Value Added Tax, has also been enforced. The tax collected by the Selling Dealer, less the tax, which he must have paid at the time of purchase of the goods, is to be remitted to the Government. A sale of goods, as contemplated by law, has actually therefore become completed pursuant to an agreement for sale and the delivery of the goods is completed and the property in the goods have passed from the seller to the purchaser. {I have only indicated the most common mode of transaction constituting a

sale of goods. Obviously, sale of movable property can take place under variety of circumstances. A reference is not made to such Myriad possibilities because, it is unnecessary to do so}.

14. Section 41 of the Act essentially contemplates a situation where taxable goods, which are once sold, are returned by the Purchasing Dealer to the Selling Dealer for variety of reasons. In effect, Section 41 of the Act is a beneficial provision, because by a fiction, it provides for the reversal of a taxable event which has already taken place viz., a completed sale of taxable goods. When A sells taxable goods to B pursuant to an agreement between them, irrespective of the time when the consideration actually passes hands, sale takes place in accordance with the intention of the parties. When the goods are returned by the Purchasing Dealer to the Selling Dealer, what actually takes place is a second sale, inasmuch as the property in the goods had already been acquired by the Purchasing Dealer from the Selling Dealer. In such circumstances, it was perfectly within the competence of the legislature to provide that a further taxable event actually takes place when goods, which have already been sold, are returned by the purchaser within a time

frame prescribed by the statute, provided certain conditions are complied with. But, that has not been done. Instead, a facility is given to the dealers to retrace their steps and to some extent, reverse in whole or in part the transaction of sale of goods, which otherwise has been completed in law. As noted above, Section 41 is, therefore, a benevolent provision and if such a provision, which essentially provides for a fiction that what is otherwise a completed sale need not be so treated, then the prescription contained in the Rules as regards the format of the Debit Note or the Credit Note, as the case may be, should be scrupulously and strictly enforced.

15. Requirement of credit note issued by a selling dealer acknowledging the receipt of a portion of the goods which he had originally sold to his purchaser bearing the details of a corresponding Debit Note issued by the purchaser cannot, under any circumstance, be treated as an onerous provision or otherwise arbitrary. Essentially, the requirement that every Credit Note must correspond with a Debit Note and vice versa and the seller and the purchaser shall exchange the Credit Note and Debit Note is only a provision which enables the verification of a

claim made by the dealers as to the return of the goods involved in a sale, which otherwise will be treated as completed. The contention that the "Note" in Form No.9 is ultra vires Rule 59 and Section 41 of the Act is misconceived. Form No.9 will have to be treated as part of the Rules, and obviously, the format is statutorily prescribed. Obviously, the petitioner could not have had a grievance even in the manner now sought to be projected in this writ petition, if the 'Note' forming part of Form No.9 was repeated verbatim in Rule 59 of the Rules. That the Rule making authority, entitled to prescribe the format of a Credit Note or a Debit Note, could not have incorporated such a prescription as a part of the Rule itself is obviously not a contention pressed forth by the petitioner. In such circumstances, where Section 41 of the Act provides that the format of the Credit Note/Debit Note will be as is prescribed, and it is so prescribed, there cannot be a contention that the 'Note' forming part of Form No.9 is ultra vires Section 41 of the Act. The contention is misconceived and untenable.

16. Learned counsel for the petitioner cited the decision reported in **CIT v. Ahmedbhai Umarbhai &Co. {AIR**

1950 SC 134} for the proposition that marginal notes in an Indian Statute, as in an Act of Parliament cannot be referred to for the purpose of construing the statute. He also referred to the decisions of the Supreme Court in **St.Johns Teachers Training Institute V. Regional Director {2003(3) SCC 321}** and **Nedurimilli Janardhana Reddy v. Progressive Democratic Students Union {1994(6) SCC 506}** and repeated the submission that Rules cannot supplant the provisions in the parent Act. Obviously, there cannot be any quarrel with the said proposition as laid down by the Supreme Court not only in the aforementioned decisions, but in several other decisions dealing not only with fiscal statutes, but other legislations as well. The 'Note' forming part of Form No.9 in the Rules is obviously not used for the purpose of supplanting Section 41 of the Act. In fact, what is being considered is whether the requirement mentioned in the Note is in consonance with the requirement of Section 41 of the Act. In my view, it is so.

17. Once the challenge against the 'Note' forming part of Form No.9 of the Rules is repelled, it is not for this court to consider the correctness of the order of assessment, which has

also been challenged in the writ petition. It is for the petitioner to prosecute the alternate remedies under the statute as against Ext.P4 order. The right of the petitioner in that regard is left open. The challenge against the Note in form No.9 of the Rules is repelled.

For all these reasons, I find that the writ petition is bereft of merits and the same is, therefore, dismissed.

Sd/-

(V.GIRI)

JUDGE

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